

Appl. No. : 09/910,430  
Filed : July 19, 2001

### REMARKS

Claims 13-21 have been canceled. Claims 7-12, 27, 29, and 32 have been amended. Claims 1-6, 22-26 and 31 are withdrawn. New Claim 33 has been added. Support for new Claim 33 can be found in original Claim 12 and page 21, line 23. Therefore, Claims 7-12, 27-30, 32 and 33 are presented for the examination. The following addresses the substance of the Office Action.

#### **Claim rejections under 35 U.S.C. §112**

The Examiner has rejected Claims 7-21, 27-30 and 32 under 35 U.S.C. §112, second paragraph as being dependent upon a non-elected claim. The Applicant has now amended Claim 7, which is now an independent Claim. Claims 8-12, 27-30 depend on Claim 7, and Claim 32 is an independent Claim. Therefore, Claims 7-21, 27-30 and 32 are now definite.

The Examiner has rejected Claims 7-21, 27-30 and 32 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to a skilled artisan that the inventors had possession of the claimed invention at the time the application was filed. More specifically, the Examiner asserted that a polynucleotide that is 75% homologous to SEQ ID NO: 26 would encompass a genus having over 44 million nucleic acid sequences as species and that the Specification did not provide a representative number of adequately described species for the genus. While the Applicant maintains that the specification is sufficient to support the genus of polynucleotides which are 75% homologous to SEQ ID NO: 26, solely for the purposes of expediting the allowance of the present application, the Applicant has limited said claims to the polynucleotide obtained from tick salivary gland said polynucleotide comprising a nucleotide sequence of SEQ ID NO: 26. Applicant respectfully requests withdrawal of the rejections of Claims 7-21, 27-30 and 32.

The Examiner has rejected Claims 7-21, 27-30, and 32 under 35 U.S.C. §112, first paragraph as non-enabled by the Specification. More specifically, the Examiner asserted that a polypeptide encoded by a polynucleotide that is 75% identical to SEQ ID NO: 26 is not enabled. While the Applicant maintains that the specification is sufficient enable polypeptides encoded by a polynucleotide that is 75% identical to SEQ ID NO: 26, solely for the purposes of expediting the allowance of the present application, the Applicant has amended these claims to recite the polypeptide encoded by a polynucleotide obtained from tick salivary gland said polynucleotide

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comprising a nucleotide sequence of SEQ ID NO: 26. Applicant respectfully requests withdrawal of the rejections of Claims 7-21, 27-30 and 32.

For all of the above reasons, Applicants respectfully request withdrawal of all rejections under 35 U.S.C. §112, and allowance of the pending application.

### CONCLUSION


Applicants have endeavored to address all of the Examiner's concerns as expressed in the outstanding Office Action. Accordingly, amendments to the claims, the reasons therefor, and arguments in support of the patentability of the pending claim set are presented above. In light of the above amendments and remarks, reconsideration and withdrawal of the outstanding rejections is specifically requested. If the Examiner finds any remaining impediment to the prompt allowance of these claims that could be clarified with a telephone conference, the Examiner is respectfully requested to initiate the same with the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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